

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ZONEPERFECT NUTRITION)	
COMPANY,)	
)	
Plaintiff and Counterclaim Defendant,)	
)	
v.)	CIVIL ACTION NO: 04-10760 REK
)	
HERSHEY FOODS CORPORATION,)	
HERSHEY CHOCOLATE &)	
CONFECTIONERY CORPORATION,)	
DR. BARRY D. SEARS, AND)	
ZONE LABS, INC.,)	
)	
Defendants and Counterclaim-Plaintiffs.)	
_____)	

NOTICE OF WITHDRAWAL OF DEFENDANTS' EMERGENCY MOTION
PURSUANT TO FED. R. CIV. P 37

The Defendants, Dr. Barry Sears, Zone Labs, Inc., Hershey Foods Corporation and Hershey Chocolate & Confectionery, respectfully withdraw their Emergency Motion Pursuant to Fed. R. Civ. P. 37. The matters addressed in the Defendants' Emergency Motion have been resolved by agreement of the parties.

BARRY D. SEARS
And ZONE LABS, INC.

By their attorneys,

_____/s/ David H. Rich
Lisa G. Arrowood (BBO#022330)
Ian Crawford (BBO#544475)
David H. Rich (BBO#634275)
Todd & Weld LLP
28 State Street

Boston, MA 02109
(617) 720-2626

By their attorneys,

HERSHEY FOODS CORPORATION AND
HERSHEY CHOCOLATE & CONFECTIONERY
CORP.

/s/ Seni M. Adio
Seni M. Adio, BBO #566709
Matthew Hurley, BBO #643638
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000
(617) 542-2241 (fax)

/s/ Thomas A. Smart
Thomas A. Smart
Richard A. De Sevo
Kaye Scholer LLP
425 Park Avenue
New York, NY 10022
(212) 836-8000
(212) 836-7154 (fax)

Dated: June 7, 2004